

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
CHILD SUPPORT DIVISION**

**CHAPTER 1240-2-4  
CHILD SUPPORT GUIDELINES**

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**1240-2-4-.01 NECESSITY AND FUNCTION.**

- (1) The Child Support Amendments of 1984 (PL 98-378) required that states establish guidelines pursuant to judicial or administrative action for setting child support award amounts. The guidelines have to be made available to all persons in the state whose duty it is to set child support award amounts in all child support cases. The guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation.
- (2) TCA § 36-5-101 requires that there must be a rebuttable presumption in all child support cases that the amount of child support determined by an application of these guidelines is the correct amount to be awarded unless the court makes a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case. Such a finding would sufficiently rebut the presumption in that case. The rebuttable presumption must be applied to all child support awards even if the order is being sought for a retroactive period before October 13, 1989.
- (3) TCA § 36-5-101 provides that the guidelines promulgated herein shall be applied as a rebuttable presumption in child support cases and that if a court finds that the evidence is sufficient to rebut this presumption, it must make a written finding that the application of the child support guidelines would be unjust or inappropriate in that particular case in order to provide for the best interest of the child or the equity between the parties and the court must show what the child support award would have been without the deviation.
- (4) These guidelines were developed by reviewing other states' guidelines; recommendations made by the United States Office of Child Support Enforcement; informal polls of judicial practices in Tennessee; comments on these guidelines by advocacy groups, judges, Title IV-D contractors, and attorneys; comments presented at a public hearing and written comments submitted after the hearing; and recommendations from the Tennessee Supreme Court Child Support Guidelines Committee.
- (5) Presented herein are the rules promulgated by the Department of Human Services in compliance with these requirements.

**Authority:** *Public Law 98-378; 42 USCA § 667(b) and 45 CFR § 302.56; Public Law 100-485; Public Chapter 206, Acts of 1989. Administrative History:* *New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 1994; effective December 14, 1994.*

**1240-2-4-.02 PURPOSES AND PREMISES.**

- (1) The Department of Human Services will comply with federal and state requirements to promulgate guidelines to be used in setting awards of child support.
- (2) The major goals in the development of these guidelines are:

(Rule 1240-2-4-.02, continued)

- (a) To decrease the number of impoverished children living in single parent families.
  - (b) To make child support awards more equitable by ensuring more consistent treatment of persons in similar circumstances.
  - (c) To improve the efficiency of the court process by promoting settlements and by giving courts and parties guidance in establishing levels of support awards.
  - (d) To encourage parents paying support to maintain contact with their child(ren).
  - (e) To ensure that when parents live separately, the economic impact on the child(ren) is minimized and to the extent that either parent enjoys a higher standard of living, the child(ren) share(s) in that higher standard.
  - (f) To ensure that a minimum amount of child support is set for parents with a low income in order to maintain a bond between the parent and the child, to establish patterns of regular payment, and to enable the enforcement agency and party receiving support to maintain contact with the parent paying support.
- (3) These guidelines shall be applicable in any action brought to establish or modify child support, whether temporary or permanent. For the purposes of defining a significant variance between the guideline amount and the current support order pursuant to TCA § 36-5-101, a significant variance shall be at least 15% if the current support is one hundred dollars (\$100.00) or greater per month and at least fifteen dollars (\$15.00) if the current support is less than \$100.00 per month. Such variance would justify the modification of a child support order unless, in situations where a downward modification is sought, the obligor is willfully and voluntarily unemployed or underemployed. Upon a petition for adjustment by either party, the court shall increase or decrease the award amount as appropriate in accordance with these guidelines unless the significant variance occurs due to a previous decision of the court to deviate from the guidelines and the circumstances which caused the deviation have not changed.
- (4) Stipulations presented to the court shall be reviewed by the court before approval. No hearing shall be required. However, the court shall use the guidelines in reviewing the adequacy of child support orders negotiated by the parties. The court shall require that stipulations in which the guidelines are not met must provide a justification for the deviation which takes into consideration the best interest of the child and must state the amount which would have been required under the guidelines.
- (5) These guidelines are a minimum base for determining child support obligations. Factors justifying upward adjustments for support include expenses for health care insurance coverage for the child if the parent paying support is not already providing this, less than average overnight visitation being exercised by the parent paying support as provided in (6) below, extraordinary educational expenses, extraordinary medical expenses for the child which are not paid by insurance, and the like.
- (6) These guidelines are designed to apply to situations where children are living primarily with one parent but stay overnight with the other parent at least as often as every other weekend from Friday to Sunday, two weeks in the summer and two weeks during holidays throughout the year. These guidelines are designed to consider the actual physical custody of the child(ren), regardless of whether custody is awarded to one parent and visitation to the other or such an arrangement is ordered to be joint custody or split custody. In situations where overnight time is divided more equally between the parents, the courts will have to make a case-by-case determination as to the appropriate amount of support (reference 1240-2-4-.04).
- (7) These guidelines shall be applied as a rebuttable presumption in all child support cases. If the court finds that the evidence is sufficient to rebut the presumption that the application of the guidelines is the correct amount to be awarded, then the court must make a written or specific finding that the

(Rule 1240-2-4-.02, continued)

application of the child support guidelines would be unjust or inappropriate in that particular case. Findings that rebut these guidelines must state the amount that would have been required under the guidelines and include a justification for deviation from the guidelines which takes into consideration the best interest of the child.

**Authority:** T.C.A. § 36-5-101; 42 USC § 667(b); 45 CFR §§ 302.56; 303.8(d); and Public Chapter 987 (1994).

**Administrative History:** New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994.

### **1240-2-4-.03 GUIDELINES FOR CALCULATING CHILD SUPPORT AWARDS.**

- (1) For clarity, the parent with whom the child(ren) live primarily will be referred to as the obligee and the parent with whom the child(ren) do not primarily live will be referred to as the obligor.
- (2) the child support award is based on a flat percentage of the obligor's net income as defined in paragraph (4) below depending on the number of children for whom support is being set in the instant case. While the income of the obligee should not be considered in the calculation of or as a reason for deviation from the guidelines in determining the support award amount, the formula presumes that the obligee will be expending at least an equal percentage of net income as that of the obligor for the support of the children for whom support is sought.
- (3) Gross income.
  - (a) Calculation of Gross Income.
    1. Gross income shall include all income from any source (before taxes and other deductions), whether earned or unearned, and includes but is not limited to, the following: wages, salaries, commissions, bonuses, overtime payments, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, benefits received from the Social Security Administration, i.e., Title II Social Security benefits, workers compensation benefits whether temporary or permanent, judgments recovered for personal injuries, unemployment insurance benefits, gifts, prizes, lottery winnings, alimony or maintenance, and income from self-employment.
    2. Income from self-employment includes income from business operations and rental properties, etc., less reasonable expenses necessary to produce such income.
    3. Depreciation, home offices, excessive promotional, excessive travel, excessive car expenses or excessive personal expenses, etc., should not be considered reasonable expenses. "In kind" remuneration must also be imputed as income, i.e., fringe benefits such as a company car, the value of on-base lodging and means in lieu of BAQ and BAS for a military member, etc.
    4. Social Security Title II Benefits.
      - (i) To the extent Social Security Title II benefits received by a child on the obligor's account meet the support obligations ordered to be paid by the obligor for the child, these benefits shall be counted as child support payments.
      - (ii) If after calculating the obligor's net income under paragraph .03(4) below and after calculating the amount of the support obligation under paragraph .03(5) below, the amount of the child support award is equal to or less than the Social Security benefits paid on behalf of the child on the obligor's account, the child support obligation is met and no further child support amount shall be paid. Any Social Security Title II benefit amounts above the court ordered support shall be

(Rule 1240-2-4-.03, continued)

retained by the caretaker for the child's benefit. The court shall make a written finding in the order to this effect.

- (iii) If after calculating the obligor's net income under paragraphs .03(4) below and after calculating the amount of the support obligation under paragraph .03(5) below, the amount of the child support award is greater than the Social Security benefits paid on behalf of the child on the obligor's account, the difference between the amount of benefits paid on behalf of the child from the obligor's account and the amount of the presumptive award under paragraph .03(5) below shall be the child support award in the case. The court shall make a written finding in the order to this effect.
  - (b) Variable income such as commissions, bonuses, overtime pay, dividends, etc., shall be averaged and added to the obligor's fixed salary.
  - (c) Gross income does not include the following:
    - 1. Child support payments received by either parent for the benefit of other children; or
    - 2. Benefits received from means-tested public assistance programs otherwise exempt by federal law or regulations such as Families First, Aid to Families with Dependent children (AFDC) and Food Stamps or Supplemental Security Income (SSI).
  - (d) If an obligor is willfully and voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, as evidenced by educational level and/or previous work experience.
  - (e) When establishing an initial order and the obligor fails to produce evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years), and the court has no other reliable evidence of the obligor's income or income potential, gross income for the current and prior years should be determined by imputing annual income of \$28,145.00. This figure represents an average of the median annual income for Tennessee families as provided by the 1999 US Census of Income and Poverty data for Tennessee Counties.
  - (f) When cases with established orders are reviewed for adjustment and the obligor fails to produce evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support), and the court has no other reliable evidence of the obligor's income or income potential, the court should enter an order to increase the child support obligation by an increment not to exceed ten percent (10%) per year for each year since the support order was entered or last modified.
- (4) Calculation of Net Income.
- (a) Definitions.
    - 1. "Legally Responsible".

For purposes of this paragraph the term "child or children for whom the obligor is legally responsible" or the term "legally responsible" means the children of the obligor who are or have been:

      - (i) Born of the parent's body;
      - (ii) Born of the parent's marriage;

(Rule 1240-2-4-.03, continued)

- (iii) The legally adopted children of the parent;
  - (iv) Voluntarily acknowledged by the parent pursuant to Tennessee Code Annotated, Section 24-7-113, or pursuant to the voluntary acknowledgement procedure of any other State or Territory that comports with the requirements of Title IV-D of the Social Security Act, as the obligor's children; or
  - (v) Determined by any court or administrative tribunal of this or any other State or Territory to be the child of the parent.
- 2. "Pre-Existing Orders". The term, "pre-existing support order" or "pre-existing order" means:
  - (i) An order that requires the obligor to make support payments for another child or children, in another case, which support the obligor is actually paying; and
  - (ii) That the date of the initial order for each such other case is earlier than the date of the initial order in the case immediately before court, regardless of the age of the child(ren) in any of the cases.
- 3. "Child" for purposes of this Chapter means:
  - (i) A person under eighteen (18) years of age, or a person who reaches eighteen (18) years while in high school until the person graduates from high school or the class of which the person is a member when the person attains eighteen (18) years of age graduates, whichever occurs first; or
  - (ii) A person who is disabled as established pursuant to T.C.A. § 36-5-101(p); or
  - (iii) A person who is subject to a marital dissolution agreement entered prior to the person's eighteenth (18th) birthday that provides for the person's educational or vocational support subsequent to the person's eighteenth (18th) birthday, but who is less than twenty-six (26) years of age.
- (b) Basic Deductions from Gross Income.
  - 1. Net income is calculated by deducting from gross income of the obligor Federal Insurance Contributions Act (FICA - 6.2% Social Security +1.45% Medicare for regular wage earners and 12.4% Social Security + 2.9% Medicare for self-employed, as of 1991, or any amount subsequently set by Federal law as FICA tax), and the amount of withholding tax deducted for a single wage earner claiming one withholding allowance (copies of the appropriate table(s) will be provided to the courts with these guidelines).
  - 2. In calculating net income for obligors who are subject to Federal or Railroad Retirement programs or any other mandatory retirement plan that operates in lieu of the Social Security retirement program, the retirement contribution up to the current FICA tax rate should be deducted from the gross income.
- (c) Additional Adjustments to Income for Pre-existing Orders of Support.
  - 1. The priority for pre-existing orders is determined by the date of the initial order in each case. Subsequent modifications of the initial support order do not affect the priority position established by the date of the initial order for any purposes of this paragraph.

(Rule 1240-2-4-.03, continued)

2. When calculating the adjustments for pre-existing orders to determine the obligor's net income pursuant to this subparagraph (c), only those pre-existing orders whose initial date of entry precedes the date of entry of the initial order in the case immediately under consideration shall be included.
  3. Payments being made by the obligor on any arrearages shall not be subtracted from the obligor's gross income.
- (d) Credits to Obligor's Income and Limits to Credits for Additional Children Not Subject to Court Ordered Support.
1. In addition to the deductions provided in subparagraph (b), parts 1 and 2, and in addition to the adjustment for children under a pre-existing order as provided in subparagraph (c), a credit or credits for additional qualifying children for whom the obligor is legally responsible and who are not subject to a pre-existing order for child support, may be considered pursuant to subparagraphs (e), (f) or (g). If granted, this credit, or these credits, shall apply after the determination of net income as provided in subparagraph (b) and after the deduction for pre-existing orders in subparagraph (c) are calculated.
  2. Use of Credits.
    - (i) Subject to the provisions of parts 3 and 4 of this subparagraph (d), the use of the credits provided in subparagraphs (e), (f) and (g) is appropriate to consider in a determination of support for children for whom support is being calculated in the case under consideration in establishing:
      - (I) The obligor's initial support order on or after July 1, 2003; or
      - (II) The amount of any subsequent upward modification of such order; or
      - (III) The amount of a support order for the child(ren) existing before or after July 1, 2003, if the application of the significant variance rule pursuant to 1240-2-4-.02(3) results in a downward modification of the order, unless the circumstances described in part 5, subpart (ii) below apply.
    - (ii) The provisions of this subparagraph (d) permitting the court to allow credits for additional children of the obligor for whom the obligor is legally responsible do not, by themselves, provide a basis for a significant variance unless a basis exists separately for a significant variance pursuant to 1240-2-4-.02(3).
    - (iii) The credits available under subparagraphs (e), (f) and (g) may be used by the obligor as a defense to an action or request by or on behalf of the obligee or caretaker of the child seeking an upward modification to any existing order of support, but apply only if the party seeking an upward modification first demonstrates a significant variance pursuant to 1240-2-4-.02(3).
  3. No Multiple Credits.

Only one full credit under subparagraphs (e), (f) or (g) for the same case shall be permitted. Full credits for children of the obligor who are in different categories under subparagraphs (e), (f) or (g) may not be used cumulatively, except as provided by part 4 below.
  4. Credits for Qualified Children in Different Categories.

(Rule 1240-2-4-.03, continued)

- (i) If an obligor has qualifying children in more than one category under subparagraphs (e), (f) or (g), the deductions or credits for qualifying children ranked in the highest priority as established by subpart (ii) below shall be applied first, followed by the procedure for credits in cases where the obligor's children are in multiple categories.

- (ii) Priority of Support Obligations.

In multiple family situations, the adjustments to net income under this paragraph (4) shall be calculated in the following order:

- (I) Adjustments for pre-existing orders according to the date of the initial order in each case pursuant to subparagraph (c);
  - (II) Adjustments for children in the obligor's home pursuant to subparagraphs (e) or (f); and
  - (III) Adjustments for other children living outside the obligor's home pursuant to subparagraph (g).
- (iii) After applying the deductions for pre-existing orders, if any, in item (ii)(I) above, then the credit for the obligor's children living in the home as described in items (ii)(II) and (III) above in subpart (ii) may be considered using the following procedure:
    - (I) Count the total number of eligible children under both subparagraphs (e) and (f) living in the obligor's home. Then, consult the chart in subparagraph (e)2, Step 4 below to determine the appropriate "adjustment percentage" for the total number of children in both categories.
    - (II) If any of the qualifying children living in the obligor's home is qualified under subparagraph (f), the adjustment percentage for the total number of qualified children living in the obligor's home may be reduced by an additional one percent (1%) for each child who qualifies due to the circumstances described regarding absence or disability of the other parent in subparagraph (f).
    - (III) If in addition to the qualified children living in the obligor's home the obligor also has additional child(ren) who are not living in the obligor's home who would otherwise qualify for consideration for credits under subparagraph (g), an additional one percent (1%) per child reduction from the "adjustment percentage" may be considered, and, if appropriate, applied, to further reduce the obligor's net income. No other method of qualification for credits will apply under these circumstances.

5. No Impairment of Existing Orders.

Any credits against the adjustment percentage or against the obligor's income, pursuant to subparagraphs (e), (f), and (g), shall not result in the reduction of any child support obligation to an amount that:

- (i) Is lower than the existing order of support, if any, in the case under consideration, unless a basis for a significant variance exists pursuant to 1240-2-4-.02(3) before the credit(s) are applied; or

(Rule 1240-2-4-.03, continued)

- (ii) Otherwise seriously impairs the ability of the custodian of the child or children in the case under consideration to maintain minimally adequate housing, food, and clothing for the children and to provide other basic necessities, as determined by the court, for the children in the case under consideration.
- (e) Credits for Other Children Living in the Home for Whom the Obligor is Legally Responsible.

1. In cases in which the obligor has children:

- (i) For whom the obligor is legally responsible; and
- (ii) Who are living in the obligor's household; and
- (iii) Who are not subject to a pre-existing support order for support; and
- (iv) Whom the obligor is actually supporting,

2. Then, in determining whether to consider those children in the obligor's household for purposes of reducing the obligor's net income or in calculating the guideline child support amount that would differ or deviate under this subparagraph (e) from the presumptive child support awards established pursuant to paragraph .03(5), the following method shall be utilized to allow a credit against the obligor's net income:

Step 1: Determine the net income of the obligor pursuant to Rule 1240-2-4-.03(4)(b)1 and 2.

Step 2: Reduce the obligor's net income by subtracting the dollar amount of current support pursuant to pre-existing support orders (if applicable) as established in subparagraph (c), if this reduction has not already been taken. Do not give credit for payments on arrears.

Step 3: Determine the number of children for whom the obligor is legally responsible who are living in the obligor's household for whom no pre-existing court order for child support exists. Children may be deemed to be living in the obligor's household though living away from the obligor to attend school (Kindergarten through grade 12). Stepchildren of the obligor are not to be considered in determining the calculation of the total number of children.

Step 4: Adjust the obligor's net income according to the number of children for whom the obligor is legally responsible who are living in the obligor's household by multiplying the obligor's net income following the deductions and adjustment in Steps 1 and 2 by the following appropriate percentage:

Number of Children	Adjustment Percentage
1	89.5%
2	84.0%
3	79.5%
4	77.0%
5+	75.0%

Step 5: Use the adjusted net income to determine the support amount for the child(ren) in the case under consideration pursuant to application of the guideline percentages established in paragraph .03 (5) below.



(Rule 1240-2-4-.03, continued)

3. If the obligor also has qualified children in subparagraphs (f) and (g), refer to subparagraph (d) 4 above for additional credits that may be allowed for those children.
  4. The granting of a credit pursuant to this subparagraph (e) shall be supported by written findings of the court that shall detail the basis for the granting of the credit and shall state the amount of the child support that would have been ordered without the credit. The findings shall include a determination that application of the presumptive awards under paragraph 1240-2-4-.03(5) below would be unjust or inappropriate and shall consider the best interests of the children for whom the support award is being established or modified.
- (f) Credits for Other Children Living in the Home for Whom the Obligor is Legally Responsible When the Other Parent Cannot Provide Support.
1. In cases in which
    - (i) Children:
      - (I) For whom the obligor is legally responsible; and
      - (II) Who are living in the obligor's household; and
      - (III) Who are not subject to a pre-existing support order for support; and
      - (IV) Whom the obligor is actually supporting, and
    - (ii) The spouse of the obligor, or the non-marital parent of the child(ren) living in the obligor's household, is unable to financially contribute to the support of the children by reason of:
      - (I) Such parent's death;
      - (II) Incapacity;
      - (III) Incarceration; or
      - (IV) Abandonment as demonstrated by reasonable efforts to locate the absent parent,
- then, compute the credit according to the directions for Steps 1-5 in subparagraph (e) above, then subtract an additional one percent (1%) from the "adjustment percentage" in subparagraph (e) 2 Step 4, for each child in this subparagraph (f).
2. If the obligor also has qualified children in subparagraph (g), refer to subparagraph (d) 4 above for additional credits for that may be allowed for those children.
  3. The granting of a credit pursuant to this subparagraph (f) shall be supported by written findings of the court that shall detail the basis for the granting of the credit and shall state the amount of the child support that would have been ordered without the credit. The findings shall include a determination that application of the presumptive awards under paragraph .03(5) below would be unjust or inappropriate and shall consider the best interests of the children for whom the support award is being established or modified.
- (g) Credits for Other Children of the Obligor Not Living in the Obligor's Household.

(Rule 1240-2-4-.03, continued)

1. In cases in which the obligor has child(ren) for whom the obligor is legally responsible who are not living in the obligor's household and who are not subject to a pre-existing support order, and the obligor has no children qualified under subparagraphs (e) or (f) above, then, for the obligor to receive a credit against the obligor's net income under part 2 below, the obligor must provide documented proof of monetary payments of support for these child(ren) paid consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is presently under consideration by the court, but in any event, such time period shall not be less than twelve (12) months.
  - (i) "Documented proof of monetary payments" means physical evidence of money payments to the child's caretaker, such as canceled checks or money orders. "In kind" remuneration such as diapers or formula are not acceptable for this credit.
  - (ii) Payments of support under a subsequent order of support are allowed as evidence for this category, such as a payment history from a court clerk or child support office or internet payment history.
2. Calculation of the Credit for Children Qualified Under Subparagraph (g).
  - (i) The documented proof of monetary payments shall be averaged over the period of the payments to produce a weekly or monthly amount. A credit may be allowed in an amount equal to no more than fifty percent (50%) of the weekly or monthly average of the documented monetary payments.
  - (ii) The credit pursuant to this subparagraph (g) shall not exceed fifty percent (50%) of the presumptive child support award pursuant to paragraph .03(5) for the number of children for whom the credit is sought.
3. If credits have been taken under either subparagraphs (e) or (f), then the one percent (1%) adjustment set forth in subparagraph (d)(4)(iii)(III) above may be granted for a child in this category, and no other.
4. The granting of a credit pursuant to this subparagraph (g) shall be supported by written findings of the court that shall detail the basis for the granting of the credit and shall state the amount of child support that would have been ordered without the credit. The findings shall include a determination that application of the presumptive awards under paragraph .03(5) below would be unjust or inappropriate in the case before the court and shall consider the best interests of the children for whom the support award is being established or modified.
- (h) Payments of child support may be ordered to be paid weekly, biweekly (every two weeks), semi-monthly, or monthly.
- (5) After determining the net income of the obligor, that amount is to be rounded up to the next dollar. That amount is then multiplied by the percentage below that corresponds to the number of children for whom support is being set in the instant case. The percentages are:

No. of children	1	2	3	4	5 or more
% of income	21%	32%	41%	46%	50%

After this calculation is made, if there are no changes to be made pursuant to paragraph 1240-2-4-.04 below, then this is the amount of the child support award.

(Rule 1240-2-4-.03, continued)

**Authority:** T.C.A. §§ 4-5-202, 36-5-101, 36-5-101(e), § 36-5-101(p); 71-1-105(12), (16); 71-1-132(a)(1); Acts of 1994, Public Chapter 987, Acts 2003, Public Chapter 373; 42 U.S.C. §§ 602, 603; 42 U.S.C. § 609(a)(8)(A) and (B); 42 U.S.C. §§ 654, 655(a)(1) and (a)(2); 42 U.S.C. § 667; 45 USC § 231; 5 CFR § 838; and 45 C.F.R. § 302.56.  
**Administrative History:** New rule filed December 18, 1987; effective February 1, 1988. Amendment filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994. Amendment filed September 29, 2003; effective December 13, 2003.

#### 1240-2-4-.04 CRITERIA FOR DEVIATION FROM GUIDELINES.

- (1) Since these percentage amounts are minimums, the court shall increase the award calculated in Rule 1240-2-4-.03 for the following reasons:
  - (a) If the obligor is not providing health insurance for the child(ren), an amount equal to the amount necessary for the obligee to obtain such insurance shall be added to the percentage calculated in the above rule.
  - (b) If the child(ren) is/are not staying overnight with the obligor for the average visitation period of every other weekend from Friday evening to Sunday evening, two weeks during the summer and two weeks during holiday periods throughout the year, then an amount shall be added to the percentage calculated in the above rule to compensate the obligee for the cost of providing care for the child(ren) for the amount of time during the average visitation period that the child(ren) is/are not with the obligor [reference 1240-2-4-.02(6)]. The court may consider a downward deviation from the guidelines if the obligor demonstrates that he/she is consistently providing more care and supervision for the children than contemplated in the rule.
  - (c) Extraordinary educational expenses and extraordinary medical expenses not covered by insurance shall be added to the percentage calculated in the above rule.
  - (d) Any other extraordinary expenses for the child(ren) may justify increasing the support calculated in the above rule if the court finds that equity requires it.
  - (e) Retroactive Support.
    1. Unless the circumstances of T.C.A. § 36-2-311(a)(11), or T.C.A. § 36-5-101(e) regarding the identification of the putative father and establishment of paternity in a paternity action, and/or the whereabouts of the parent and child(ren) in question in a paternity, separation, annulment or divorce case have been established by clear and convincing evidence provided to the court demonstrating that the limitation on, and deviation from, the presumption that a retroactive support order should be entered back to the date of the birth of the child or back to the date of separation of the parties, is appropriate, then, in cases in which initial support is being set, a judgment must be entered to include an amount of monthly support due up to the date that an order for current support is entered:
      - (i) From the date of the child's birth:
        - (I) In paternity cases; or,
        - (II) Where the child has been voluntarily acknowledged as provided in T.C.A. 24-7-113, or pursuant to the voluntary acknowledgement procedure of any other State or Territory that comports with the requirements of Title IV-D of the Social Security Act, as the obligor's children; or, as applicable:
      - (ii) From the date:
        - (I) Of separation of the parties in a divorce or in an annulment; or,

(Rule 1240-2-4-.04, continued)

- (II) Of abandonment of the child(ren) and the remaining spouse by the other parent in such cases.
- 2. The retroactive support amount shall be calculated based upon the guidelines using the average income of the obligor over the past two (2) years, and is presumed to be correct unless rebutted by either party.
- 3. A periodic payment amount shall be included in the retroactive support order to reduce the retroactive judgment for support on a monthly basis within a reasonable time.
- (f) Valuable assets and resources (expensive home or automobile which seem inappropriate for the income claimed by the obligor) of the obligor should be considered for the purpose of imputing income and increasing the support award in any case if the court finds that equity requires it.
- (2) Deviation from the guidelines may be appropriate in other cases when the court finds it is in the best interest of the child(ren) including, but not limited to, the following:
  - (a) In cases where the Department of Children's Services has taken custody of the child(ren) who are subject to an existing order for support or for whom the court has established a support order following placement into the custody of the Department of Children's Services pursuant to a dependency and neglect proceeding pursuant to T.C.A. § 37-1-101 et seq. or other action of any court, and where the parent(s) is/are making reasonable efforts to secure the return of the child(ren) to either parent from that Department, and where the plan for return of the children is set forth in a foster care or permanency plan for the child that, pursuant to T.C.A. 37-2-401, et seq., or similar process in any other State or Territory, is approved by the parent(s) and by the Department of Children's Services or other such agency in any other State or Territory; and/or
  - (b) In cases where physical custody of the child(ren) is more equally divided between the parties than occurs in a situation where one party has an average amount of overnight visitation as defined in 1240-2-4-.02(6).
- (3) Consideration of Obligor's Income by the Court; Deviations; Educational Trusts.
  - (a) The court must consider all net income of the obligor as defined according to 1240-2-4-.03 of this rule.
  - (b) The court must order child support paid to the custodial parent or other caretaker of the child based upon the appropriate percentage described herein up to the obligor's adjusted net income per month of Ten Thousand Dollars (\$10,000).
  - (c) If the net income of the obligor following deductions, adjustments and credits made pursuant to subparagraphs (b) - (g) exceeds Ten Thousand Dollars (\$10,000.00) per month, then the custodial parent must prove by a preponderance of the evidence that child support in excess of the amount, [calculated by multiplying the appropriate percentage set forth in the child support guidelines in paragraph .03(5) below by a net income of ten thousand dollars (\$10,000.00) per month)], is reasonably necessary to provide for the needs of the minor child or children for whom support is being determined in the case specifically under consideration.
  - (d) In making its determination regarding a request for deviation, the court shall consider all available income of the obligor as required by this Chapter, and shall make a written finding that child support in excess of the amount so calculated is, or is not, reasonably necessary to provide for the needs of the minor child or children for whom support is being determined in the case specifically under consideration.

(Rule 1240-2-4-.04, continued)

- (e) In each case of deductions and adjustments pursuant to this paragraph .03(4), the presumptive award established by paragraph .03(5) below is determined after the calculation of all deductions from and adjustments to the obligor's income and after all credits available to the obligor have been allowed as provided by this subchapter .03.
  - (f) The court may require that sums paid above the percentage applied to the net income above Ten Thousand Dollars (\$10,000.00) per month be placed in an educational or other trust fund for the benefit of the child and shall make a written finding in the order supporting the basis for such an order.
- (4) In instances of extreme economic hardship, such as in cases involving extraordinary medical needs not covered by insurance or other extraordinary special needs for the child(ren) of the obligor's current family, [child(ren) living in the home with the obligor for whom the obligor is legally responsible] deviation from the guidelines may be considered in order to achieve equity between the parties when the court so finds.
- (5) In deviating from the guidelines, primary consideration must be given to the best interest of the child(ren) for whom support under these guidelines are being utilized in the case before the court. Written reasons justifying deviation must be included in the order allowing the deviation, together with a statement of what the support would have been under the guidelines without the deviation.

**Authority:** T.C.A. §§ 4-5-202; 36-2-311(a)(11); 36-5-101(e); 37-1-101 *et seq.*; 37-2-401 *et seq.*; 71-1-105(12), (16); 71-1-132(a)(1); Public Law 98-378; Public Law 100-485; 42 U.S.C. § 667; 45 C.F.R. § 302.56; Acts of 1989; Public Chapter 206; and Acts 2003, Ch. 361, §§ 1 and 2. **Administrative History:** New rule filed August 25, 1989; effective October 13, 1989. Amendment filed September 29, 1994; effective December 14, 1994. Amendment filed July 22, 1997; effective October 5, 1997. Amendment filed September 29, 2003; effective December 13, 2003.